

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0030P

**Withholding Tax
For the month of July 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly sales tax return for the month of July 2003.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was the result of the misinterpretation of the due date by a new employee. Furthermore, the taxpayer claims to have a very good payment history.

With regard to the payment history, the taxpayer has had another filing which was filed late due to changes in accounting personnel.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. The taxpayer needs to ensure the taxpayer’s employees are aware of filing requirements.

FINDING

The taxpayer’s penalty protest is denied.